

INTERFERENCE DIGEST

Interference No. 106,617

Paper No.

Name: Gregory J. Caton

Serial No.: 10/782,405

Patent No.

Title: Lower alkyl carboxylic acid moieties as organoleptic stabilizers and preservatives of food and beverages and for preventing oxidative corrosion of metals

Filed: 02/19/04

Interference with Manos

DECISION ON MOTIONS

Administrative Patent Judge, _____ Dated, _____

FINAL DECISION

Board of Patent Appeals and Interferences, _____ Dated, _____

Court, _____ Dated, _____

REMARKS

This should be placed in each application or patent involved in interference in addition to the interference letters.



UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES
BOX INTERFERENCE, WASHINGTON, D.C. 20231

Filed by: Judge Fred E. McKelvey
Telephone: 571-272-4683
Facsimile: 571-273-0042

Applicant: CATON
Application No.: 10/782,405
Filed: 02/19/04
For: Lower alkyl carboxylic acid moieties as
organoleptic stabilizers and preservatives of food and
beverages and for preventing oxidative corrosion of
metals

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,617.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

/Fred E. McKelvey/
FRED E. McKELVEY
Senior Administrative Patent Judge

BoxInterferences@uspto.gov
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Paper 1
Entered: 25 March 2008

UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Interference 105,617 McK
Technology Center 1700

GREGORY JAMES CATON,

Application 10/782,405,
Junior Party,

v.

PAUL D. MANOS,

Patent 7,264,847 B2,
Senior Party,

DECLARATION

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Part A
Declaration of Interference

An interference is declared between the above-identified parties.
35 U.S.C. § 135(a); 37 CFR § 41.203(b).

Details of the application, patent, count and claims designated as
corresponding or as not corresponding to the count appear in Parts E and F
of this DECLARATION.

Part B
Judge Managing the Interference

Senior Administrative Patent Judge Fred E. McKelvey has been
designated to manage the interference. 37 CFR § 41.104(a).

Part C
Standing Order

A Trial Division STANDING ORDER (3 Jan. 2006) (Paper 2)
accompanies this DECLARATION.

The STANDING ORDER applies to this interference, including the
provisions related to Electronic Filing. See ¶ 105, pages 17-20.

1 **Part D**
2 **Initial Conference Call and Motions Lists**
3

4 Conference Call

5 A conference call to discuss the interference is set for:

6 **3 p.m. (1500 hours Eastern Daylight Time) on 07 May 2008.**

7 The Board will initiate the conference call.
8

9 Motions Lists

10 On or before:

11 **Noon (1200 hours EDT) on 02 May 2008,**

12 each party shall file, and on or before:

13 **5:00 p.m. (1700 hours EDT) on 02 May 2008,**

14 each party shall serve a notice stating the relief the party requests, *i.e.*, a
15 motions list including motions the party seeks authorization to file. 37 CFR
16 § 41.120(a); STANDING ORDER ¶ 204 (Paper 2, page 58).

17 The default procedure for filing and serving motions lists is that
18 motions lists are to be *filed* before being *served*.

19 By filing before service, one party will not have access to an
20 opponent's motions list prior to the filing of the party's motions list.

21 Nevertheless, the parties may mutually agree to discuss and serve
22 motions lists at any time prior to the date and time motions lists are due.

23 The following shall be included in motions lists.

24 (1) Proposed motion for benefit (*i.e.*, to be accorded an
25 earlier constructive reduction to practice) must identify the application(s) for
26 which benefit will be sought.

1 (2) Proposed motion to attack benefit must identify the
2 application(s) to be attacked.

3 (3) Proposed motion seeking judgment against an opponent
4 based on alleged unpatentability must identify the statutory basis for the
5 alleged unpatentability and:

6 (a) if based on prior art, identify the prior art;

7 (b) if based on the first paragraph of 35 U.S.C. § 112,

8 (i) identify whether written description, enablement or best mode will be the
9 basis for the motion, and (ii) briefly identify the basis for any alleged
10 unpatentability;

11 (c) if based on an alleged failure to comply with
12 35 U.S.C. § 135(b), briefly identify the reason;

13 (d) if based on the second paragraph of 35 U.S.C.
14 § 112, identify the limitation which is believed to be indefinite.

15 (4) Proposed motion based on no interference-in-fact shall
16 briefly identify the reason no interference-in-fact is believed to exist.

17 (5) Proposed motion to designate additional claims as
18 corresponding to a count or as not corresponding to a count shall identify the
19 claims involved.

20 (6) Proposed motion to add or substitute a new count shall
21 explain why the added or substitute count is necessary.

22 A motions list shall not contain any "reservation clause" whereby a
23 party purports to reserve a right to file additional motions. Additional
24 motions are those authorized by the Board consistent with the rules.

25 A sample schedule for taking action during the motions phase of the
26 interference appears as Form 2 (page 69) of the STANDING ORDER.

1 Counsel are encouraged to discuss the schedule prior to the
2 conference and agree to on times for taking action generally consistent with
3 the sample schedule.

4 A typical motions phase last about eight (8) months.

5 The parties should be prepared at the conference to justify any request
6 for shorter or longer time periods.

7

1 **Part E**

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3 **Identification of the Parties**
4 **Assignment of Exhibit Numbers**
5 **Initiating Settlement Discussions**
6

7 Junior Party

8
9 Inventor: Gregory James Caton, LA
10
11 Application: Application 10/782,405,
12 filed 19 February 2004
13
14 Title: Lower alkyl carboxylic acid moieties as
15 organoleptic stabilizers and preservatives of food
16 and beverages and for preventing oxidative
17 corrosion of metals.
18
19 Real party in interest: Intellectual Concepts, LLC
20

21 Senior Party

22
23 Inventor: Paul D. Manos, NC
24
25 Patent: U.S. patent 7,264,847 B2
26 granted 04 September 2007
27 based on application 10/606,946,
28 filed 26 June 2003
29
30 Title: Lower alkyl carboxylic acid moieties for
31 preventing oxidative corrosion of metals and
32 organoleptic stabilizer for food and beverages
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34 Real party in interest: Zannier, Inc.
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36 Assignment of Exhibit Numbers

37 Senior party: Exhibit Numbers 1001 through 1999.
38 Junior party: Exhibit Numbers 2001-2999.

1 Board: Exhibit Numbers 3001-3999.

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3 Initiating Settlement Discussions
4 STANDING ORDER ¶ 126.1 (Paper 2, pages 40-41)
5

6 The senior party is responsible for initiating settlement discussions
7 required by the STANDING ORDER.

8 **Part F**
9 **Count and Claims of the Parties**

10
11 A method according to any of claims 2, 4, 8, 17, 27, 28 or 30 of
12 Caton application 10/782,405

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14 or

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16 a method according to any of claims 1, 15, 17, 19, 24, 25 or 26 of
17 Manos patent 7,264,847 B2.

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19 The claims of the parties are:

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21 Caton: 2, 4-15, 17-28 and 30

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23 Manos: 1-26

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25 The claims that correspond to Count 1 are:

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27 Caton: 2, 4-15, 17-28 and 30

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29 Manos: 1-26

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31 The claims that do not correspond to Count 1 are:

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33 Caton: None

34
35 Manos: None
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1 The parties are accorded an earlier constructive reduction to practice
2 (*i.e.*, benefit for the purpose of priority) of the following applications:

3 Caton: Provisional application 60/448,153
4 filed 19 February 2003

5
6 Manos: Provisional application 60/448,153
7 filed 19 February 2003

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9 **The Board notes that both parties are accorded an earlier**
10 **constructive reduction to practice based on the same provisional**
11 **application. The provisional application names both Caton and**
12 **Manos as inventors. *See* Paper 3.**

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Part H
Order Form for Requesting File Copies

When requesting file copies, a party shall use STANDING ORDER Form 4 (page 71).

Use of form 4 will expedite processing of any request.

a party should attach to any request for file copies a photocopy of Part E of this DECLARATION with a hand-drawn circle around the patent and application files for which a copy of a file wrapper is requested.

The parties are advised that a single order for file copies may be filled by the Office of Public Records at more than one time. STANDING ORDER ¶ 109.2 (Paper 2, pages 25-27).

Part I
Required Paragraph of Affidavits and Declarations

The Board has experienced cases in which a witness has belatedly advanced reasons why the witness would be unable to appear for cross examination at a reasonable time and place in the United States.

Consequently, to prevent surprise and hardship to the party relying on the testimony of a witness, the following paragraph must be included on the signature page of all affidavits (including declarations) filed in this case. STANDING ORDER ¶ 157.2 (Paper 2, pages 52-53).

In signing affidavit (declaration), I understand that the affidavit (declaration) will be filed as evidence in a contested case before the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office. I also acknowledge that I may be subject to cross examination in the case and that cross

1 examination will take place within the United States. If cross
2 examination is required of me, I will appear for cross
3 examination within the United States during the time allotted
4 for cross examination.
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9 /s/ Fred E. McKelvey)
10 FRED E. McKELVEY)
11 *Senior Administrative Patent Judge*)
12
13

14 Entered at:
15
16 Kailua, HI
17 25 March 2008

1 cc (via Federal Express):
2
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